THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3140 of 2006

Dated:2.1.2007

Between
1.K.Mallesh and others.

.....Petitioners

and

1. The A.P. Co-operative Tribunal
rep., by its Special Grade Dy.Registrar
Secretary, Warangal, Warangal
Dist and another.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3140 of 2006

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to OP No.13 of 2003 on the file of the Co-operative Tribunal, Warangal, dated 9.12.2003 and to quash the same as arbitrary and illegal.

The petitioner borrowed certain amounts from the Society and the 2nd and 3rd petitioners stood as sureties. When the amounts were not repaid, the society approached the 1st respondent-A.P. Cooperative Tribunal by filing OP No.13 of 2003 under Section 37 (1) (b) of the A.P.MACS Act 1995 for recovery of amount of Rs.1,05,808/-on the ground that the 1st petitioner has availed loan of Rs.66,000/- along with interest at 24% p.a.. But, he did not repay the amount. The Tribunal after an

elaborate consideration of the matter passed an award on 9-12-2003. According to the petitioners, the award passed on 9.12.2003 is an *ex parte* award and no notice was served on them. They came to know as to passing of an award when EP No.38 of 2004 was filed before the 1st respondent and immediately they filed the present writ petition.

There is no necessity to go into all the details. It is suffice to notice that according to the petitioners, the award passed on 9.12.2003 is an *ex parte* award and no notices have been served on them. Under those circumstances, it is always open for the petitioners to approach the 1st respondent to work out their remedies. The petitioners ought to have filed a petition under Order 9 Rule 13 CPC for restoration of the OP setting aside the *exparte* order. Instead of doing that, they have filed the present writ petition straight away questioning the *exparte* order passed by the Tribunal.

Therefore, I deem it appropriate to direct the petitioner to file an appropriate petition before the 1st respondent-Tribunal seeking restoration of the

O.P. by setting aside the *ex parte* order passed on 9.12.2003.

Hence, the writ petition is disposed of directing the petitioner to file a petition under Order 9 Rule 13 C.P.C. seeking to set aside the *exparte* award passed by the Tribunal on 9.12.2003. Till the *exparte* award is set aside, the EP No. 38 of 2004 shall not be proceeded with. However, it is always open for the petitioners to explain the delay caused in filing the petition under Order 9 Rule 13 of CPC seeking restoration of the O.P as per law.

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02-01-2007

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